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Attorneys for Plaintiff Stacey M. Richards

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

STACEY M. RICHARDS,

Plaintiff,

v.

GREG COX, RENEE BAKER and
ERIC BOARDMAN,

Defendants.

Case No. 2:16-cv-1794-JCM-BNW

**AMENDED JOINT
PRETRIAL CONFERENCE
ORDER**

After pretrial proceedings in this case,
IT IS ORDERED:

I. Statement of the Nature of the Action

Plaintiff Stacey M. Richards brings this action pursuant to 42 U.S.C. § 1983 alleging violations of the Eighth Amendment. Plaintiff was an inmate in the lawful custody of the Nevada Department of Corrections (NDOC) and housed in Ely State Prison (ESP). Plaintiff suffered

1 injuries from pellets in a shotgun round fired by Correctional Officer Eric Boardman in response
2 to an inmate fight in which Plaintiff was not involved.

3 Plaintiff sues for compensatory general and punitive damages pursuant to 42 U.S.C.
4 § 1983 based on alleged deprivations of his Eighth-Amendment rights. Along with Officer
5 Boardman, Defendants include former NDOC Director Eric Cox and former ESP Warden Renee
6 Baker (the supervisory defendants) based on alleging that NDOC and ESP policies, training and
7 procedures allowing birdshot was a moving force behind the constitutional deprivation.

8 In addition to compensatory general damages for his ocular injuries and punitive
9 damages, Plaintiff seeks attorney's fees pursuant to 42 U.S.C. § 1988 and costs.

10 Defendants assert that there was no violation of Plaintiff's constitutional rights, and,
11 therefore, Plaintiff is entitled to no damages.

12 **II. Statement of Jurisdiction**

13 Because this case arises under 42 U.S.C. § 1983, federal-question subject matter
14 jurisdiction is conferred upon this Court by 28 U.S.C. §§ 1331 and 1343.

15 **III. Statement of Uncontested Facts**

16 The following facts are admitted by the parties and require no proof:

- 17 1. Defendant Greg Cox, as NDOC Director, adopted Use of Force Policy, AR
18 (Administrative Regulation) 405, on January 2, 2012, and reenacted it October 20,
19 2014. It was in effect at the time of this incident.
- 20 2. AR 405.2 defines "non-deadly force" as force "not designed to or likely to cause
21 death or serious bodily injury."
- 22 3. AR 405.3(6) lists among "types of non-deadly force equipment" 12-gauge
23 shotguns loaded with a blank round and a 7.5 birdshot round.
- 24 4. Each birdshot round includes about 300 small metal pellets.
- 25 5. Defendant Renee Baker, as ESP's Warden, enacted OP (Operating Procedure)
26 405, classifying shotgun blasts of birdshot as a "non-deadly use of firearms." It
27 was in effect at the time of this incident.

6. OP 405 requires that a blank “warning shot” be fired “upward and away from any persons” before “live rounds may be fired into the ground near the problem inmates or disturbance.”
7. When an inmate disturbance breaks out, correctional officers issue verbal orders and expect all inmates to get down on the floor and cover their faces and heads.
8. Correctional officers are trained they may fire “skip shots” at inmates who continue to fight after a failure to comply with the verbal order.
9. Plaintiff Stacey Richards was arrested in Nevada in 2012, at age 21. At the time Stacey Richards had his brother Rashaad Williams’ identification, and was convicted and incarcerated under that name. For the purposes of this lawsuit, Plaintiff Stacey Richards and inmate Rashaad Williams are the same person.
10. On April 21, 2015, Plaintiff Richards, then age 24, was a worker inmate at ESP housed in a unit with about 90 other worker inmates. He was congregating in a common area during free time with a few dozen other inmates.
11. At about 7:15 p.m., four inmates attacked a fifth inmate. Plaintiff Richards and the inmates with whom he was congregating were not involved in the disturbance.
12. Officer Boardman issued a verbal order to “stop fighting, get on the ground.” Plaintiff Richards and other uninvolved inmates got on the ground.
13. Officer Boardman did not see a weapon.
14. Certain inmates remained standing and continued fighting.
15. Officer Boardman fired a shotgun.
16. Plaintiff was hit with birdshot in the face, neck, shoulder and chest.
17. The birdshot that hit Plaintiff Richards left eye permanently ended all potential vision, including perception of light.
18. The birdshot that hit Plaintiff Richards’ right eye detached his retina. Kwang Lee, M.D., a retina specialist in Las Vegas, reattached the retina, preserving partial vision in Plaintiff’s right eye.
19. Plaintiff Richards obtained medical treatment for his right eye.

IV. The following facts, though not admitted, will not be contested at trial by evidence to the contrary:

None.

V. The following are the issues of fact to be tried and determined at trial:

1. Whether former NDOC Director Cox was deliberately indifferent and, therefore, violated Plaintiff's constitutional rights under the Eighth Amendment by adopting AR 405. In other words whether he subjectively knew of and consciously disregard an excessive risk to inmate safety, when he implemented AR 405.
2. Whether AR 405 requires "get-down orders" prior to discharging a skip-shot round.
3. Whether NDOC Director Cox knew of "get-down orders" prior to discharging a skip-shot round when an inmate altercation occurs.
4. Whether NDOC Director Cox consciously disregarded any risk that would have existed if "get-down orders" were provided prior to discharging a skip-shot round when an inmate altercation occurs.
5. Whether NDOC policy AR 405 itself was a repudiation of Plaintiff's constitutional rights and constituted a moving force behind Plaintiff Richard's alleged constitutional deprivation.
6. Whether former ESP Warden Baker was deliberately indifferent, and, therefore, violated Plaintiff's constitutional rights under the Eighth Amendment by adopting OP 405. In other words, whether she subjectively knew of and consciously disregard an excessive risk to inmate safety, when she implemented ESP OP 405.
7. Whether the NDOC policy itself was a repudiation of Plaintiff's constitutional rights and constituted a moving force behind Plaintiff Richard's constitutional deprivation.
8. Whether the ESP operating procedure 405 itself was a repudiation of Plaintiff's constitutional rights and constituted a moving force behind Plaintiff Richard's constitutional deprivation.

- 1 9. Whether ESP operating procedure 405 requires a “get-down order” prior to the
- 2 use of a skip shot round.
- 3 10. Whether Officer Boardman fired a blank round when the inmates began fighting.
- 4 11. Whether Officer Boardman fired one or two live birdshot rounds in the direction
- 5 of Plaintiff Richards after he complied with Officer Boardman’s order to get
- 6 down on the floor.
- 7 12. Whether Officer Boardman used force directed at Plaintiff.
- 8 13. Whether the use of force exceeded the amount necessary based on the threat
- 9 Officer Boardman perceived during the violent altercation between inmates.
- 10 14. Whether Officer Boardman perceived a threat that warranted the use of a skip-
- 11 shot as permitted by NDOC regulation and ESP procedures.
- 12 15. Whether Officer Boardman ordered inmates, including Plaintiff Richards, to put
- 13 their faces near where he was aiming the shotgun and fired the shotgun moments
- 14 later.
- 15 16. Whether Officer Boardman acted with the purpose of causing harm.
- 16 17. Whether Officer Boardman acted with the purpose of ending the inmate fight.
- 17 18. Whether Officer Boardman should have called for backup and monitored the
- 18 situation.
- 19 19. Whether Plaintiff properly complied with Officer Boardman’s verbal order by
- 20 allegedly lifting his head and face rather than keeping his head and face covered.
- 21 20. Whether inmates are trained and/or advised to cover they heads and faces when
- 22 provided a verbal order to get down during a physical altercation.
- 23 21. Whether Plaintiff has admissible evidence that any putative deterioration in the
- 24 vision of Plaintiff’s sight in his right eye is the natural and probable consequence
- 25 of the incident.
- 26 22. Whether Plaintiff has admissible evidence that any putative emotional distress or
- 27 mental suffering was the natural and probable consequence of the incident.
- 28

23. Whether Plaintiff's putative emotional distress/mental suffering was caused by his November 16 arrest and subsequent incarceration as described in Plaintiff's responses to Defendants' interrogatories.

24. Whether Plaintiff has mitigated his damages by timely seeking medical treatment for an injury to his right eye and adhered to treatment offered to him.

VI. Agreed Statement of Contested Issues of Law

(a) Plaintiff

The principle contested issue of law, qualified immunity, has been fully litigated and adjudicated adversely to Defendants. All rulings in the following are now law of the case: (1) the District Court Order denying Defendants' motion for summary judgment as to Defendants Cox and Baker, (2) the District Court Order denying Defendants' motion for reconsideration as to Defendants Cox and Baker, (3) the Memorandum Decision of the Ninth Circuit affirming the District Court Orders as to Defendants Cox and Baker, and (4) the District Court Order after remand denying Defendant Boardman's motion for summary judgment.

(b) Defendants

Whether FRCP 26(a)(1)(A)(i-iii), FRCP 26(e), and 37(c)(1) bars Plaintiff from introducing evidence of emotional distress/mental suffering damages?

VII.

(a) The following exhibits are stipulated into evidence in this case and may be so marked by the clerk:

1. Video of Incident, April 21, 2015 at Ely State Prison (DEF 001).
2. Diagram of Tier (DEF 002-3)
3. Nevada Offender Tracking Information System ("NOTIS") Report "Investigation Detail Report" IR-2015-ESP-000649 (DEF 004-8)
4. NDOC "Preliminary Incident Report" (37 pages)
5. Officer Boardman's handwritten report
6. Officer Boardman's typed report
7. Sgt. James Lester report 4-22-2015 (two pages)

8. Lt. Randall Shultheis report 4-22-2015 (two pages)
9. NDOC Administrative Regulation 405 effective October 20, 2014 (DEF 022-27)
10. ESP Operational Procedure 405 effective March 15, 2011 excerpted (DEF 028-33, 37-38, 41)
11. NDOC medical records, notes and orders (DEF 058-202)
12. Plaintiff's medical records from William Bee Ririe Hospital, 1500 Ave H, Ely, NV 89301.
13. Plaintiff's medical records from Sunrise Hospital, 3186 S. Maryland Pkwy, Las Vegas, NV 89109.
14. Plaintiff's medical records from Nevada Retina Center, 3006 S. Maryland Pkwy, Las Vegas, NV 89109 (Kwang Lee, M.D.)

(b) As to the following exhibits, the party against whom the same will be offered objects to their admission on the grounds stated:

(1) Set forth the plaintiff's exhibits and objections to them.

1. "Use of Force Policy, Practices and Staff Training Regarding the Use of Shotguns in Nevada Prisons," submitted to the Nevada Department of Corrections by the Association of State Correctional Administrators, September 21, 2015. (DEF083 – DEF126).¹
2. "Response/Corrective Action Plan to the Use of Force Policy, Practices and Staff Training Regarding the Use of Shotguns in Nevada Prisons," submitted to Board of State Prison Commissioners by the: Nevada Department of Corrections, October 13, 2015²
3. Scene photos³
4. Stills from Video⁴

¹ Objection: 401, 403, 407, 602, 801, 802, 805

² Objection: 401, 403, 407, 602, 801, 802, 805

³ Objection: Does not comply with Local R. 16-3(b)(8) as Defendants cannot readily identify the photos referenced.

⁴ Objection: Does not comply with Local R. 16-3(b)(8) as Defendants cannot readily identify the stills to be used.

5. Plaintiff's medical records from California Eye Specialists⁵

6. Plaintiff's dental x-ray (12/30/2021)⁶

7. Plaintiff's medical records from Kaiser Permanente, Southern California locations.⁷

(2) Set forth the defendant's exhibits and objections to them.

1. NOTIS "Case Note Report" identified as **DEF 009 - 017**⁸

2. NOTIS "Disciplinary History Report" identified as **DEF 018 - 019**⁹

3. NOTIS "Grievance History Report" identified as **DEF 020 - 021**¹⁰

4. Administrative Regulation 405 eff October 20, 2014, identified as **DEF 022 - 027**

5. Ely State Prison Operational Procedure 405 eff March 15, 2011, identified as **DEF 028 - 047**

6. Plaintiff's Institutional File, kites and correspondence, identified as **DEF 048 - 057**¹¹

7. Plaintiff's NDOC Medical Records 2015-2016 identified as **DEF 058 - 113**

8. Plaintiff's responses to Defendants' interrogatories and requests for admissions.

(c) Electronic Evidence

The parties at this stage do not foresee presenting evidence in electronic format to jurors for purposes of jury deliberations.

(d) Depositions

(1) Plaintiff may seek to introduce Defendants' deposition testimony at trial if they are not available to testify. If so, Plaintiff will work with Defendants to identify the relevant portions to be offered with all unresolved objections.

(2) Plaintiff will introduce the video deposition of Anthony C. Gregory, II, M.D. Plaintiff will work with Defendants to identify the relevant portions to be offered with all unresolved objections.

⁵ 801, 802, 901

⁶ FRCP 37(c)(1), 801, 802, 901

⁷ 801, 802, 901

⁸ FRE 401, 403, 404, 802

⁹ FRE 401, 403, 404, 802

¹⁰ FRE 403, 802

¹¹ FRE 401, 403, 404, 802

1 (2) Defendant may seek to introduce deposition transcripts of Derek Bumgardner at trial.
2 If so, Defendant will work with Plaintiff to identify the relevant portions to be offered with all
3 unresolved objections.

4 (3) Defendant may seek to introduce deposition transcripts of Daniel Gore at trial. If so,
5 Defendant will work with Plaintiff to identify the relevant portions to be offered with all
6 unresolved objections.

7 (4) Defendant may seek to introduce deposition transcripts of Dr. Kwang J. Lee at trial. If
8 so, Defendant will work with Plaintiff to identify the relevant portions to be offered with all
9 unresolved objections. (Plaintiff may seek to introduce Dr. Lee's deposition testimony if he is
10 not available on the date set for trial.)

11 (e) Objection to Depositions

12 (1) Plaintiff objects to Defendants' depositions as follows:

13 Plaintiff contend that readings from the Bumgardner and Gore depositions should not be
14 allowed, or should be limited to evidence (that Plaintiff does not dispute) that he was driving
15 when pulled over. Other details of his arrest should be barred under Fed. R. Evid. 403 and 404.

16 (2) Defendants object to Plaintiff's depositions as follows:

17 Defendants contend that no part of Dr. Gregory's testimony should be admissible. Dr.
18 Gregory's opinion on a causal relation between an injury to Plaintiff's right eye resulting from
19 the April 21, 2015 use of force incident and the current condition of Plaintiff's right eye is
20 speculative since he never reviewed a complete set of Plaintiff's post-injury medical records,
21 Plaintiff did not produce a complete set of his medical records post-injury, and Plaintiff never
22 produced his pharmacy records reflecting his post-injury adherence to medical advice for treating
23 an injury to his right eye.

24 **VIII. The following witnesses may be called by the parties at trial**

25 **Plaintiff:**

- 26 1. Plaintiff Stacey Richards, C/O Plaintiff's Counsel
27 2. Chris Richards (Plaintiff's father), C/O Plaintiff's Counsel
28 3. Defendant Greg Cox, C/O Defense Counsel (FRE 611(c)(2))

4. Defendant Renee Baker, C/O Defense Counsel (FRE 611(c)(2))
5. Defendant Eric Boardman, C/O Defense Counsel (FRE 611(c)(2))
6. Lieutenant Randall Schultheis, C/O Defense Counsel (FRE 611(c)(2))
7. Sgt. James Lester, C/O Defense Counsel (FRE 611(c)(2))
8. Milton Enniss, NDOC No. 94402, the inmate closest to Plaintiff when he was shot¹²
9. Richard Lichten, Plaintiff's correctional expert, 26504 Bouquet Cyn Rd, Suite 110
Santa Clarita, CA 91350
10. Kwang Lee, M.D., treated Plaintiff at Sunrise Hospital, 3186 S. Maryland Pkwy, Las
Vegas, NV 89109, and follow up treatment at Nevada Retina Center, 3006 S.
Maryland Pkwy, Las Vegas, NV 89109
11. Anthony C. Gregory, II, M.D. Ophthalmologist who has examined and treated Mr.
Richards and will testify to his injuries and prognosis, as stated in the medical records
and his deposition of September 27, 2022. Kaiser Permanente Woodland Hills
Medical Center, 5601 De Soto Ave, Woodland Hills, CA 91367 (833) 574-2273

Defendants:

1. Plaintiff Stacey Richards (also known as Rashaad Williams) c/o Chesnoff &
Schonfeld, 520 South Fourth Street, Las Vegas, Nevada 89101, knowledge regarding
the claims and subject matter of his Complaint.
2. William Gittere, c/o Defense Counsel, Austin T. Barnum, Nevada Attorney General's
Office, 555 E. Washington Ave., Ste. 3900, Las Vegas, NV, 89101, (702) 486-0661,
regarding the subject matter, claims, and defenses of this case.
3. Harold "Michael" Byrne, c/o Defense Counsel, Austin T. Barnum, Nevada Attorney
General's Office, 555 E. Washington Ave., Ste. 3900, Las Vegas, NV, 89101, (702)
486-0661, regarding the subject matter, claims, and defenses of this case.
4. Defendant Eric Boardman, c/o Defense Counsel, Austin T. Barnum, Nevada Attorney
General's Office, 555 E. Washington Ave., Ste. 3900, Las Vegas, NV, 89101, (702)
486-0661, regarding the subject matter, claims, and defenses of this case.

¹² Objection: 401, 403, 602, 701

- 1 5. Defendant James Cox, c/o Defense Counsel, Austin T. Barnum, Nevada Attorney
2 General's Office, 555 E. Washington Ave., Ste. 3900, Las Vegas, NV, 89101, (702)
3 486-0661, regarding the subject matter, claims, and defenses of this case.
- 4 6. Michael Fletcher, c/o Defense Counsel, Austin T. Barnum, Nevada Attorney General's
5 Office, 555 E. Washington Ave., Ste. 3900, Las Vegas, NV, 89101, (702) 486-0661,
6 regarding the subject matter, claims, and defenses of this case.
- 7 7. James Lester, Correctional Lieutenant, c/o Defense Counsel, Austin T. Barnum,
8 Nevada Attorney General's Office, 555 E. Washington Ave., Ste. 3900, Las Vegas,
9 NV, 89101, (702) 486-0661, responding staff to the incident and has knowledge
10 regarding the subject matter of this case.
- 11 8. Randall Schultheis, Correctional Lieutenant, c/o Defense Counsel, Austin T. Barnum,
12 Nevada Attorney General's Office, 555 E. Washington Ave., Ste. 3900, Las Vegas,
13 NV, 89101, (702) 486-0661, responding staff to the incident and has knowledge
14 regarding the subject matter of this case.
- 15 9. Terrance Deeds, c/o Defense Counsel, Austin T. Barnum, Nevada Attorney General's
16 Office, 555 E. Washington Ave., Ste. 3900, Las Vegas, NV, 89101, (702) 486-0661,
17 responding staff to the incident and has knowledge regarding the subject matter of
18 this case.
- 19 10. Michael Grant, c/o Defense Counsel, Austin T. Barnum, Nevada Attorney General's
20 Office, 555 E. Washington Ave., Ste. 3900, Las Vegas, NV, 89101, (702) 486-0661,
21 responding staff to the incident and has knowledge regarding the subject matter of
22 this case.
- 23 11. Jesus Gaytan, c/o Defense Counsel, Austin T. Barnum, Nevada Attorney General's
24 Office, 555 E. Washington Ave., Ste. 3900, Las Vegas, NV, 89101, (702) 486-0661,
25 responding staff to the incident and has knowledge regarding the subject matter of
26 this case.
- 27 12. Kerry Sliker, c/o Defense Counsel, Austin T. Barnum, Nevada Attorney General's
28 Office, 555 E. Washington Ave., Ste. 3900, Las Vegas, NV, 89101, (702) 486-0661,

1 responding staff to the incident and has knowledge regarding the subject matter of
2 this case.

3 13. Thomas Hinkle, c/o Defense Counsel, Austin T. Barnum, Nevada Attorney General's
4 Office, 555 E. Washington Ave., Ste. 3900, Las Vegas, NV, 89101, (702) 486-0661,
5 responding staff to the incident and has knowledge regarding the subject matter of
6 this case.

7 14. Richard Adams, c/o Defense Counsel, Austin T. Barnum, Nevada Attorney General's
8 Office, 555 E. Washington Ave., Ste. 3900, Las Vegas, NV, 89101, (702) 486-0661,
9 responding staff to the incident and has knowledge regarding the subject matter of
10 this case.

11 15. Dana Cole, c/o Defense Counsel, Austin T. Barnum, Nevada Attorney General's
12 Office, 555 E. Washington Ave., Ste. 3900, Las Vegas, NV, 89101, (702) 486-0661,
13 responding staff to the incident and has knowledge regarding the subject matter of
14 this case.

15 16. Corey Cooke, c/o Defense Counsel, Austin T. Barnum, Nevada Attorney General's
16 Office, 555 E. Washington Ave., Ste. 3900, Las Vegas, NV, 89101, (702) 486-0661,
17 responding staff to the incident and has knowledge regarding the subject matter of
18 this case.

19 17. Christopher Williams, c/o Defense Counsel, Austin T. Barnum, Nevada Attorney
20 General's Office, 555 E. Washington Ave., Ste. 3900, Las Vegas, NV, 89101, (702)
21 486-0661, responding staff to the incident and has knowledge regarding the subject
22 matter of this case.

23 18. Laarnie Rice, c/o Defense Counsel, Austin T. Barnum, Nevada Attorney General's
24 Office, 555 E. Washington Ave., Ste. 3900, Las Vegas, NV, 89101, (702) 486-0661,
25 responding staff to the incident and has knowledge regarding the subject matter of
26 this case.

27 19. Gail Holmes, c/o Defense Counsel, Austin T. Barnum, Nevada Attorney General's
28 Office, 555 E. Washington Ave., Ste. 3900, Las Vegas, NV, 89101, (702) 486-0661,

1 responding staff to the incident and has knowledge regarding the subject matter of
2 this case.

3 20. Teresa Stark, c/o Defense Counsel, Austin T. Barnum, Nevada Attorney General's
4 Office, 555 E. Washington Ave., Ste. 3900, Las Vegas, NV, 89101, (702) 486-0661,
5 responding staff to the incident and has knowledge regarding the subject matter of
6 this case.

7 21. Cheyanna Anderson, c/o Defense Counsel, Austin T. Barnum, Nevada Attorney
8 General's Office, 555 E. Washington Ave., Ste. 3900, Las Vegas, NV, 89101, (702)
9 486-0661, responding staff to the incident and has knowledge regarding the subject
10 matter of this case.

11 22. Amy Godinez, c/o Defense Counsel, Austin T. Barnum, Nevada Attorney General's
12 Office, 555 E. Washington Ave., Ste. 3900, Las Vegas, NV, 89101, (702) 486-0661,
13 responding staff to the incident and has knowledge regarding the subject matter of
14 this case.

15 23. Wade Randall, c/o Defense Counsel, Austin T. Barnum, Nevada Attorney General's
16 Office, 555 E. Washington Ave., Ste. 3900, Las Vegas, NV, 89101, (702) 486-0661,
17 responding staff to the incident and has knowledge regarding the subject matter of
18 this case.

19 24. Dennis Homan, c/o Defense Counsel, Austin T. Barnum, Nevada Attorney General's
20 Office, 555 E. Washington Ave., Ste. 3900, Las Vegas, NV, 89101, (702) 486-0661,
21 responding staff to the incident and has knowledge regarding the subject matter of
22 this case.

23 25. Matthew Noriega c/o Defense Counsel, Austin T. Barnum, Nevada Attorney
24 General's Office, 555 E. Washington Ave., Ste. 3900, Las Vegas, NV, 89101, (702)
25 486-0661, was present with Defendant Boardman in the overhead control room
26 during the incident, and has knowledge regarding the subject matter of this case.¹³

27
28 ¹³ Plaintiff notes that witnesses 25-27 were not listed on Defendants Rule 26 disclosures. Defendants note that the witnesses were identified in numerous documents and filings in this case, including in documents provided with their initial disclosures on February 17, 2017, Defendants' Requests for Production of Documents provided on April

26. Elliott Burleigh c/o Defense Counsel, Austin T. Barnum, Nevada Attorney General's Office, 555 E. Washington Ave., Ste. 3900, Las Vegas, NV, 89101, (702) 486-0661, was present in the unit at the time of the incident, and has knowledge regarding the subject matter of this case.

27. Jake Nichols, c/o Defense Counsel, Austin T. Barnum, Nevada Attorney General's Office, 555 E. Washington Ave., Ste. 3900, Las Vegas, NV, 89101, (702) 486-0661, was present in the unit at the time of the incident, and has knowledge regarding the subject matter of this case.

28. Attending medical providers at William Bee Ririe Hospital, Ely, Nevada. Treated injuries of Plaintiff.

29. Attending medical providers at Sunrise Hospital, Las Vegas, Nevada. Treated injuries of Plaintiff.

30. Attending medical providers at University of California, Irvine Gavin Herbert Eye Institute Irvine, California. Treated injuries of Plaintiff.

31. Attending medical providers at Kaiser Permanente, California. Treated injuries of Plaintiff.

32. Attending medical providers at the Braille Institute, California. Treated injuries of Plaintiff.

33. Stanley L. Kephart, c/o Defense Counsel, Austin T. Barnum, Nevada Attorney General's Office, 555 E. Washington Ave., Ste. 3900, Las Vegas, NV, 89101, (702) 486-0661, as an expert witness at trial, regarding his expert opinion in the provided reports.

34. Derek Bumgardner, Sergeant LA County Sheriff's Department, an officer with personal knowledge of Plaintiff's ability to drive.

35. Dr. Majid Moshifar, Medical Director of Research, Hoopes Durrie, Rivera Research,

(continued)

12, 2017, in Plaintiff's initial disclosures dated February 8, 2017 and Plaintiff's First Supplemental Disclosures dated May 2, 2017 Defendants further note the witnesses are included in the Preliminary Investigation Report, a stipulated exhibit set forth in this document in Section VII, a, ¶ 4, at p. 6. Counsel will meet and confer and bring any objection to the Court's attention only if necessary.

1 LLC, Hoopes Vision, Salt Lake City, Utah 84020, (801) 568-0200, a rebuttal expert
2 witness to be called should Dr. Gregory be permitted to testify via deposition
3 regarding a causal connection between an injury to Plaintiff's right eye resulting from
4 the April 21, 2015 use of force incident and Plaintiff's right eye's current condition
5 and future prognosis.

6 Plaintiff objects to the presence on this list of Dr. Moshifar, who appears to be an
7 ophthalmology expert witness retained by Defendants, on the basis that he has not been disclosed
8 pursuant to Rule 26(a)(2), or in any other manner. Plaintiff first learned of his involvement in
9 this case when he received Defendants' response to Plaintiff's proposed amended order on
10 October 21, 2022.

11 Defendants contend that should Dr. Gregory be permitted to testify, Dr. Moshifar should
12 be permitted to provide rebuttal testimony as this Court's September 8, 2022 order suggests, as
13 any report or testimony provided by Dr. Moshifar will be specifically relating "to the
14 supplements received from Plaintiff after the close of discovery" relating to Dr. Gregory. ECF
15 No. 141 at 16:7-8. Should this Court permit Dr. Gregory to testify and Defendants decide to rely
16 on Dr. Moshifar in rebuttal to that testimony, Defendants will provide any expert report obtained
17 and permit Plaintiff to conduct any deposition of Dr. Moshifar Plaintiff desires in order to
18 prepare Dr. Moshifar's potential rebuttal testimony.

19 **IX The attorneys have met and jointly offer these three trial dates:**

20 The parties suggest a date during February, March (except as mentioned below), or April
21 2023.

22 Dr. Lee, the ophthalmologist who treated Plaintiff prior to his release from NDOC
23 custody and is under subpoena from Plaintiff, is not available March 16-26, 2023.

24 **X. Trial Estimate**

25 It is estimated that the trial will take a total of 5-7 days.

26 **XI. Motions in Limine**

27 Plaintiff will, if necessary, file a motion to exclude Dr. Moshifar, who appears to be an
28 ophthalmology expert witness retained by Defendants, on the basis that he has not been disclosed

1 pursuant to Rule 26(a)(2), or in any other manner. Plaintiff first learned of his involvement in
2 this case when he received Defendants' response to Plaintiff's proposed amended order on
3 October 21, 2022.

4 Defendants have filed motions in limine, and Plaintiff has filed responses.

5 Should Defendants' pending motion in limine to exclude Dr. Gregory, which was filed
6 prior to Dr. Gregory's deposition be denied by this Court, Defendants (if Defendants' pending
7 motion is denied), will file a motion in limine to preclude any testimony from Dr. Gregory
8 linking the current state of Plaintiff's vision in his right eye and future prognosis to the April 21,
9 2015 use of force incident.

10 Respectfully submitted,

11 Dated: October 24, 2022

CHESNOFF & SCHONFELD
THE LAW OFFICES OF JOHN BURTON

/s/ John Burton¹⁴

13 By: _____
14 John Burton
Attorneys For Plaintiff

15 AARON D. FORD
16 Attorney General

/s/ D. Randall Gilmer

17 By: _____
18 D. Randall Gilmer
19 Chief Deputy Attorney General
20 Attorneys for Defendants

21
22
23
24
25
26
27
28 ¹⁴ John Burton has authorization to submit this filing on behalf of all counsel whose names and signatures appear herein.

XI. ACTION BY THE COURT

This case is set for jury trial on the fixed/stacked calendar on **April 24, 2023 at 9:00 a.m.**
Calendar call will be held on **April 19, 2023 at 1:30 p.m.**

DATED: November 4, 2022


UNITED STATES DISTRICT JUDGE